OGC Has Reviewed

<u>AFFIDAVITS</u>

Antistrike Legislation.

Chief, Personnel Division

Legal Staff

1 May 1950

Affidavit - Striking Against the Federal Government.

STATSPEC

1. The memorandum from the Administrative Officer, ████, dated 3 April 1950, raises an implied question of the necessity for a non-strike affidavit for foreign personnel recruited abroad. The Administrative Officer of the Mediterranean Bureau has indicated that because of physical inconvenience in reaching a U. S. Notary the signatures of alien employees will be witnessed without notarization unless the Bureau is instructed that such practice is not satisfactory, or until a classified Bureau employee is granted notary privileges.

2. The current appropriation act, in keeping with the provisions of its predecessors, prohibits the use of any part of the appropriation to pay the salary or wages of people who advocate, or belong to an organization that advocates, the overthrow of the U.S. Government by force or violence. The so-called "no-strike" affidavit is prima-facie evidence, for purposes of the record, that an employee does not fall within the prohibited class.

3. An essential element of any affidavit is the "jurat" which identifies the officer before whom the oath is taken. The authority of the officer to accept the oath is necessarily imposed by law and is generally identified as a notary public, or a commissioner or clerk of a court.

4. Since access to the consul - the only available official with formal notary powers - is difficult, we have considered the possibility of substituting the Agency representative on the scene who is empowered to give the oath of office. Unfortunately, the Comptroller General, in his opinion of 20 Comp. Gen. 924, has indicated that an affidavit executed before an officer or employee who is authorized to administer oaths for certain specific purposes only - such as oaths of office, etc. as distinguished from oaths generally - does not meet the affidavit requirements of the appropriation acts. Although the affidavit requirement is primarily for administrative consideration, the General Accounting Office does require a certificate of compliance to be made a part of the pay rolls. Further, the "statement or declaration denotes something more than is involved in taking an oath for the faithful performance of the duties of a position and to support and defend the Constitution of the United States - the usual requirements of the oath of office of Government officers and employees." Further, a specific authorization to administer an oath of office "does not vest in the officer authority to administer any other oath or to take acknowledgments to affidavits such as are here involved." While the affidavit is not required of employees of Government contractors (see 20 Comp. Gen. 111), or independent contractors who owe no duty to the Government other than the faithful performance of (28 Comp.

Gen. 296), it appears that the persons considered here are actually employees of the Government and are subject to the restrictions of the Comptroller's interpretation.

5. Although the authority to administer the oath of office is not sufficient to cover the oath required of the no-strike affidavit, Title 5 U.S.C.A. Section 16a provides, in pertinent part, that "any officer or employee of any of the executive departments * * * designated in writing by the head thereof for such purpose, is hereby authorized to administer the oath required by section 16 of this title, incident to entrance into the executive branch of the Federal Government, or any other oath required <u>by law in connection with employment therein,</u> such oath to be administered without charge or fee and to have the same force and effect as oaths administered by officers having seals." (Our emphasis.) Section 16 provides in general for administration of the oath of office. Under this provision, it would clearly appear that the Director had authority to designate in writing those persons who might administer the oaths required for the affidavits.

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cc: Subject
    Chrono
    ✓Legal Decisions

Attach:
1 Memo 3 Apr. 1950 to Chief, Personnel Div.
2 Affidavit in duplicate